

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW JOSEPH SOARES,

Defendant-Appellant.

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UNPUBLISHED

July 24, 2008

No. 273333

Lapeer Circuit Court

LC No. 05-008462-FH

Before: Owens, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of operating a motor vehicle while intoxicated (OWI) causing death, MCL 257.625(4), and manslaughter, MCL 750.321. Defendant was sentenced to concurrent sentences of 7 to 15 years for each count. We reverse and remand.

On the evening of August 19, 2004, William Day was driving his motorcycle on a rural road in Lapeer county when an SUV, driven by defendant, ran a stop sign at a high rate of speed, causing Day’s motorcycle to collide head-on with the side of defendant’s SUV. Defendant was injured in the crash and subsequent rollover of his SUV; Day was killed. Defendant’s blood alcohol level (BAL) two hours after the crash was 0.06, which could be extrapolated to mean that his BAL was between 0.07 and 0.09 or higher at the time of the crash. It was later determined that Day was also speeding and that, based on a blood test, Day had smoked or otherwise ingested marijuana. The prosecutor filed a motion to exclude the evidence of Day’s marijuana use at the time of the crash, claiming it would be unfairly prejudicial and irrelevant, and this motion was granted.

Defendant claims that evidence of Day’s use of marijuana should have been admitted because it is relevant to determining the proximate cause of the accident. Generally, a trial court’s decision whether to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). But a preliminary question of law regarding the admissibility of evidence is reviewed de novo. *Id.*

Both manslaughter with a motor vehicle and OWI causing death require proof that a defendant’s operation of the vehicle was a proximate cause of the victim’s death. *People v Schaefer*, 473 Mich 418, 436-437; 703 NW2d 774 (2005), overruled in part by, explained by,

*People v Derror*, 475 Mich 316; 715 NW2d 822 (2006); *People v Tims*, 449 Mich 83, 95; 534 NW2d 675 (1995).

For a defendant's conduct to be regarded as a proximate cause, the victim's injury must be a "direct and natural result" of the defendant's actions. In making this determination, it is necessary to examine whether there was an intervening cause that superseded the defendant's conduct such that the causal link between the defendant's conduct and the victim's injury was broken. If an intervening cause did indeed *supersede* the defendant's act as a legally significant causal factor, then the defendant's conduct will not be deemed a proximate cause of the victim's injury.

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The linchpin in the superseding cause analysis . . . is whether the intervening cause was foreseeable based on an objective standard of reasonableness. If it was reasonably foreseeable, then the defendant's conduct will be considered a proximate cause. If, however, the intervening act by the victim or a third party was not reasonably foreseeable—e.g., *gross* negligence or intentional misconduct—then generally the causal link is severed and the defendant's conduct is not regarded as a proximate cause of the victim's injury or death. [*Schaefer*, *supra* at 436-438 (emphasis in original).]

At the plea hearing, the following stipulation was placed on the record by the prosecutor regarding the potential testimony of Michelle Gwyn, Ph.D, who works for the Michigan State Police Crime Lab:

It is my understanding, in talking to Michelle Gwyn there was a blood test performed on the decedent . . . that did detect, in the blood, 17 nanograms of carboxy-THC, a marijuana metabolite. Michelle Gwyn . . . is the expert that the prosecution would use in reference to explaining what that means.

. . . [H]er testimony will essentially be that it is a moderate level of carboxy-THC. It is her opinion that this may slow reaction time. That is certainly possible. She likely believes he would probably be high, doubts he would be sober, and it's possible some intoxication but she cannot say to what level that intoxication would be, and he had ingested marijuana within a few hours.

Defendant argues that the victim's operation of his motorcycle about 9 or 10 mph over the speed limit while marijuana was in his system—a violation of MCL 257.625(8) (a misdemeanor)—constitutes gross negligence that acted as a superceding cause of the crash that caused the victim's death, making the trial court's decision to exclude evidence of the victim's marijuana use error requiring reversal.

In support of his argument, defendant cites *People v Moore*, 246 Mich App 172; 631 NW2d 779 (2001). The defendant in *Moore* was charged with negligent homicide. *Id.* at 173.

The trial court had concluded that evidence of marijuana in the victim's blood should be excluded because it "was more prejudicial than probative." *Id.* at 174. On interlocutory appeal, this Court ruled that the trial court had abused its discretion in excluding this evidence. *Id.* at 179. Noting that there was evidence showing the presence of marijuana in the victim's blood and that the defendant had expert testimony that marijuana by-products would thus have been in the victim's brain, this Court concluded that evidence of the victim's marijuana use was relevant "and may be considered by the jury in its determination whether the defendant's negligence, if any, caused the decedent's death." *Id.* at 180.

As in *Moore*, defendant in the case at hand had blood evidence of Day's marijuana use. Further, there would have been testimony that Day may have been high at the time of the accident and his reaction time slowed. Defendant's expert testified at the July 6, 2006 pretrial hearing that if Day had an additional .1 or .2 of a second, he could have avoided the collision. Thus, there was evidence that Day's reaction time might have been slowed by the marijuana, and it was arguable that if Day's reactions had not been slowed by the marijuana, he might have applied his brakes .1 to .2 of a second sooner and avoided the collision. As in *Moore*, the trial court should have permitted this evidence to go before the jury, as it was "clearly relevant" to the issue of whether defendant's negligence caused Day's death.<sup>1</sup> *Id.*

Accordingly, we conclude that the trial court abused its discretion in granting the prosecutor's motion to exclude evidence of Day's use of marijuana at the time of the accident, reverse defendant's conviction, and order a new trial.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Peter D. O'Connell

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<sup>1</sup> Although we concur with the dissent that this is a close evidentiary question, we feel constrained to reverse based upon this Court's published opinion in *Moore, supra*, that a victim's marijuana use was relevant "and may be considered by the jury in its determination whether the defendant's negligence, if any, caused the decedent's death." *Id.* at 180. Although the dissent attempts to factually distinguish *Moore* from the present case, we are unpersuaded by the distinction. We also note that if a hypothetical defendant had tested positive for marijuana, we would, no doubt, find this evidence admissible to prove that the defendant was, in fact, in violation of the statute. It is axiomatic that evidence deemed admissible for one party should be equally admissible for the opposing side.